

## **SECTION 5.0 NONCONFORMING USES AND STRUCTURES**

### **5.1 APPLICABILITY**

These By-Laws shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or Special Permit issued before the first publication of notice of the public hearing required by Massachusetts General Laws, Chapter 40A, Section 5 at, which these By-Laws, or any relevant part hereof, were adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.

### **5.2 NONCONFORMING USES**

The Board of Appeals may grant a Special Permit to change a nonconforming use in accordance with this Section 5.0 only if there is a finding that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

**5.2.1** Change or substantial extension of the use; or

**5.2.2** Change from one nonconforming use to another, less detrimental, nonconforming use.

### **5.3 NONCONFORMING STRUCTURES THAT ARE NOT SINGLE AND TWO-FAMILY RESIDENTIAL STRUCTURES**

The reconstruction, alteration or extension of, or the structural change to, any nonconforming structure that is not a single or two-family residential structure may be authorized by the Board of Appeals in accordance with the following:

**5.3.1** A Special Permit is required for the reconstruction, extension, alteration or structural change of or to a nonconforming structure that does not increase an existing nonconformity or that does not create a new nonconformity; or

**5.3.2** A Special Permit is required for the reconstruction, extension, alteration or structural change of or to a nonconforming structure that results in the nonconforming structure being used for a substantially different purpose or use that is permitted under the By-Laws, or that results in the nonconforming structure being used for the same purpose or use in a substantially different manner or to a substantially greater extent, provided that such reconstruction, extension, alteration or structural change does not increase an existing nonconformity or does not create a new nonconformity; or

**5.3.3** A Special Permit is required for the extension of an exterior wall of a nonconforming structure at or along the same nonconforming distance to the front, side or rear line within a required yard (any such extension not being deemed to constitute an increase in the existing nonconformity or the creation of a new nonconformity for purposes of these By-Laws).

**5.3.4** A variance is required in the event that the reconstruction, extension alteration, or structural change of or to a nonconforming structure increases an existing nonconformity or creates a new nonconformity. Notwithstanding the foregoing, the extension of an exterior wall of a nonconforming structure at or along the same nonconforming distance

to the front, side, or rear line within a required yard shall not be deemed to constitute an increase in an existing nonconformity or the creation of a new nonconformity for the purposes of these By-Laws, and shall not require the issuance of a variance.

A Special Permit may be granted by the Board of Appeals pursuant to Section 5.3.1, Section 5.3.2, or Section 5.3.3 only if there is a finding by the Board of Appeals that the reconstruction, extension, alteration or change shall not be substantially more detrimental to the neighborhood in which the structure is located than the existing nonconforming structure. A variance may be granted by the Board of Appeals pursuant to Section 5.3.4 only in accordance with the requirements of Section 10.2.2.3.

#### **5.4 NONCONFORMING SINGLE AND TWO-FAMILY RESIDENTIAL STRUCTURES**

Nonconforming single and two-family residential structures may be reconstructed, extended, altered, or structurally changed as of right upon a determination by the Building Commissioner that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure. The following circumstances shall not be deemed to increase the nonconforming nature of said structure as long as such addition does not increase the habitable floor area of the original structure by more than twenty-five (25%) percent:

**5.4.1 Insufficient Area.** Alteration to a structure located on a lot with insufficient area that complies with all current setback, yard, building coverage, and building height requirements; or

**5.4.2 Insufficient Frontage.** Alteration to a structure located on a lot with insufficient frontage that complies with all current setback, yard, building coverage, and building height requirements; or

**5.4.3 Side Yard Encroachment.** Alteration to a structure that encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and building height requirements.

**5.4.4 Increase in Nonconforming Nature.** When the Building Commissioner determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change because the above-stated criteria do not apply, the Board of Appeals, if there is a finding, may allow such reconstruction, extension, alteration, or change provided that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

#### **5.5 ABANDONMENT OR NON-USE**

Any nonconforming use or structure that has been abandoned or not used for a period of twenty-four (24) months, shall lose its protected status and be subject to all of the provisions of these By-Laws; provided, however, that such use or structure may be restored to its protected status by Special Permit from the Board of Appeals.

#### **5.6 RECONSTRUCTION AFTER CATASTROPHE OR DEMOLITION**

Any nonconforming structure may be reconstructed after a catastrophe or after demolition in accordance with the following provisions:

**5.6.1 Two Years.** Reconstruction of said premises shall commence within twenty-four (24) months after such catastrophe or demolition.

**5.6.2 As of Right.** Buildings as reconstructed shall be located on the same footprint as the original nonconforming structure, and shall be only as great in gross floor area as the original nonconforming structure.

**5.6.3 By Special Permit.** In the event that the proposed reconstruction would (a) cause the structure to exceed the gross floor area of the original nonconforming structure, or (b) cause the structure to be located other than on the original footprint, a Special Permit shall be required from the Board of Appeals prior to such demolition.

**5.7 REVERSION TO NONCONFORMITY**

No nonconforming use, if changed to a conforming use, shall revert to a nonconforming use.